



CITY OF PHILADELPHIA

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June 13, 2011

Diana Lopez
Senior Editor
Sunshine Review

dlopez@sunshinereview.org

VIA ELECTRONIC MAIL

Re: May 6, 2011 Right To Know Requests

Dear Ms. Lopez:

Thank you for writing to the City of Philadelphia ("the City") with your requests for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 et seq., (the "Act").

On May 6, 2011 the City received your requests for the following information.

- 1) Records of **all salaries more than \$50k** from January 1, 2008 to January 1, 2011. **[Part 1]**
- 2) Records of salaries from January 1, 2008 to January 1, 2011 for:
 - Deputy District Chief
 - District Chief
 - Assistant Deputy Fire Commissioner
 - Deputy Fire Commissioner
 - First Deputy Fire Commissioner
 - Fire Commissioner

[Part 2]

- 3) Benefits information in dollars for items 1 and 2, from January 1, 2008 to January 1, 2011.

[Part 3]

- 4) Overtime paid to personnel who retired January 1, 2008 to January 1, 2011. For example, if John Smith retired January 1, 2008, how much overtime was he paid in 2008? **[Part 4]**
- 5) Number of department-issued cell phones from January 1, 2008 to January 1, 2011. Also, any relevant policy regarding department-issued cell phones and cell phone reimbursement. **[Part 5]**
- 6) Number of department-issued personal cars for take-home use from January 1, 2008 to January 1, 2011. Also, any relevant policy regarding department-issued cars and mileage reimbursement. **[Part 6]**

Your request for information is attached. This letter constitutes the City's response to Parts 1-4, and Part 6 of your request. You have provided a two week extension to respond to Part 5 of your request.

Your requests are granted, in part, and denied in part as set forth more fully below. Records responsive to your request are attached.

At the outset, all parts of your request are denied, at least in part, for insufficient specificity. While Parts 1-3 of your request seeks "records" on certain subjects, a request for "records" is not sufficiently specific to identify what type of records requested. Such requests could conceivably encompass a wide variety of records that are maintained by numerous departments.¹ The Act requires, among other things, that a written request "identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested" 65 P.S. § 67.703.² The requirement of specificity is necessary to (1) ensure that a requestor provides enough information so that "an agency can determine whether to grant or deny the request[;]" *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa. Commw. 1996), and (2) "to prevent agencies from suffering undue interference and obstruction of their daily functions; . . . [which] would be unavoidable if agency officials always could be subjected to broad and unlimited requests for documents and records." *Mooney v. Temple Univ. of the Commonwealth Sys. Of Higher Educ. Bd. Of Trustees*, 292 A.2d 395, 397 n.8 (Pa. 1972) ("requests for inspection [must] be specific and particular seeking disclosure of named documents or records rather than broad and unlimited requests for undefined bodies of documents or records").

The Pennsylvania courts have repeatedly held that requests for "all records", similar to the parts of your request for "Records of [X]", are not sufficiently specific. *See, e.g., Arduino v. Borough of Dunmore*, 720 A.2d 827, 831 (Pa. Commw. 1998) (holding that a request for "'all records' related to the disbursement of the funds for [certain] public projects" lacked sufficient specificity), *appeal*

¹ For example, Parts 1 and 2 of your request are so broad that they could encompass emails, notes, memoranda or other records concerning the salaries referenced.

² This language is identical to the language in § 2(c) of the prior Right-to-Know Law, 65 P.S. 661., *et seq.* Accordingly, the case law interpreting this language in the context of the old Right-to-Know Law remains binding. *Dep't of Conservation & Natural Res. v. Office of Open Records*, 1 A.3d 929, 940-941 (Pa. Commw. 2010) (interpreting language in the new Act by relying on prior precedent holding that "[t]he language in the two definitions is virtually identical. Faced with a prior judicial interpretation . . . by . . . the Pennsylvania Supreme Court of the account/voucher/contract language in the RTKL, even though issued in the context of the Old Law, we are not at liberty here to ascribe a different meaning to the same language.").

denied, 741 A.2d 195 (Pa. 1992); *Hunt. v. Pa. Dep't of Corr.*, 698 A.2d 147, 149 (Pa. Commw. 1997) (holding that requests, including a request for all documents given by Department of Correction to inmate and by inmate to Department, lacked sufficient specificity); *Associated Builders and Contractors, Inc. v. Pa. Dep't of Gen Servs.*, 747 A.2d 962, 965-66 (Pa. Commw. 2000) (holding that requests "akin to document requests under the civil discovery rules, i.e., 'any and all documents relating to [subject matter]'" lack sufficient specificity); *accord PSP v. OOR*, 995 A.2d 515, 517 (Pa. Commw. 2010) ("The portion of the request seeking any and all records, files or communications [concerning subject matter] is insufficiently specific for the PSP to respond to the request."). Such broad requests have been, and will be, denied.

Your request is insufficiently specific such that the City is unable to determine specifically what records are being requested, whether you are requesting public or non-public records, or even what City departments may maintain the records you are attempting to request. The City is a large entity, and records are maintained in numerous City departments. Without specifying what records are sought with sufficient specificity the City is unable to respond to your request. As a courtesy, the City has narrowed and interpreted Parts of your request as best it could and provided what it believes to be responsive information.³

Response to Part 1: *Your request is granted, in part, and denied in part.* This request is denied, in part, as it is insufficiently specific such that the City is unable to determine what records are being requested as discussed above. The City has interpreted this Part 1 of your request as seeking a spreadsheet reflecting the name and job title of those individuals employed by the Fire Department that have annual salaries of more than \$50,000 for the calendar years 2008-2011. At the outset, under the Act, the City is not required "create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the City does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705. Without waiving the forgoing grounds for denial, and those stated above, your request is granted and a spreadsheet with information responsive to your request is attached.⁴

Response to Part 2: *Your request is granted, in part, and denied in part.* This request is denied, in part, as it is insufficiently specific such that the City is unable to determine what records and/or benefit information is being requested as discussed above. The City has interpreted Part 2 of your request as seeking a spreadsheet reflecting the name and salaries of those individuals who hold the positions listed in Part 2 of your request for the calendar years 2008-2011. At the outset, under the Act, the City is not required "create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the City does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705. Without waiving the forgoing grounds for denial, and those stated above, your request is granted, in part, and a spreadsheet responsive to your request is attached⁵ which contains information for certain listed positions as described below:

- **Deputy District Chief:** Information provided for Deputy Chief position.
- **District Chief:** The City has no position, but believes the equivalent may be the Battalion Chief position and has provided information for that position.

³ This response should not be interpreted as a representation that a similar request for information will be treated similarly.

⁴ Please see footnote three.

⁵ Please see footnote three.

- **Assistant Deputy Fire Commissioner:** The City has no such position.
- **Deputy Fire Commissioner:** Information Provided
- **First Deputy Fire Commissioner:** The City has no such position.
- **Fire Commissioner:** Information Provided

Response to Part 3 of Your Request: *Your request is granted, in part, and denied in part.* This request is denied, in part, as it is insufficiently specific such that the City is unable to determine what records and/or benefit information is being requested as discussed above. Your request is further denied on the grounds that the City is not required “create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the City does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705. The City does not have records that specifically respond to the personnel referenced in Parts 1 and Parts 2 of your request, however, the City has attached records that include benefits information for employees, which can be cross referenced by name.⁶

Response to Part 4-6: *Your request is granted, in part, and denied in part.* At the outset, to qualify as a written request under the Act, “the request must clearly seek “records” as that term is defined under the [Act].” *Pacelli v. City of Hazelton*, Docket No.: AP 20100492, 2010 PA O.O.R.D. LEXIS 443 (OOR June 29, 2010). The Office of Open records has repeatedly held that “[a] requester cannot merely submit questions, **or requests other than for records, under the [Act].**” *See, e.g., id* (emphasis added). In addition the OOR recently held that where a “Requestor [does] not identify records sought and frame[s] his request as questions only . . . the City of Philadelphia ha[s] no obligation under the [Act] to respond.” *Osborne v. City of Philadelphia*, OOR Dkt. AP 2011-0330 (OOR Letter, March 30, 2011) (emphasis omitted). Since such a request is not a proper request under the Act, the OOR has held that “no appeal rights under the [Act] [are] triggered.” *Id.* Parts 4-6 of your request on their face do not request records. As a result, this letter is an informal response to your request provided as a courtesy.

With respect to Part 4 of your request is insufficiently specific such that the City is unable to determine what records or information you are requesting. Subject to the grounds for denial above, the City is unable to provide the information it appears you are requesting (i.e. information on overtime paid only to retired employees). However, on the spreadsheet provided, Record “A” indicates the employee was an active employee, and the “I” indicates that the employee became inactive in the year in question. Please note that this includes employees became inactive for any number of reasons, not just due to retirement.

With respect to Part 5 of your request, subject to the grounds of denial stated above, you have agreed to provide the City a two week extension to respond to this portion of your request. Thank you again for your courtesy. The City reserves the right to assert all bases for denial to this part of your request at the time its final response is given.

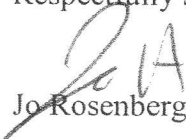
⁶ These records were created as a courtesy to respond to previous requests for information. *See* footnote 3.

With respect to Part 6 of your request, subject to the grounds for denial above, your request is granted, attached please find records responsive to your request.⁷ Please note that the list of vehicles provided is out of date and is in the process of being updated. At this time the City does not have an estimate of when a more current list will be available.

The City reserves its rights to assert additional bases for denial if additional responsive records are located after a review of such records. Additionally, as noted above all parts of your request are insufficiently specific such that the City has been unable to determine what records have been requested. As a result, the City can not accurately determine all necessary bases of denial for such records that it has been unable to identify. The City reserves its right to assert additional basis for denial to the extent your request encompasses records that are not "public records" as that term is defined under the Act.

Should you wish to contest any part of this decision, you may file an appeal with the Office of Open records as provided for in 65 P.S. § 67.1101. You have 15 business days from the mailing date of this response to challenge the City's response. Please direct any appeal to the Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225.

Respectfully submitted,


Jo Rosenberger Altman

Attachments

Cc: Thomas Elsasser, Managing Director's Office
Celia O'Leary, Office of Human Resources
Michael Kauffman, Finance Department
Deborah Beatrice, Finance Department
Joseph James, Division of Technology
Kyna Kirkland, Division of Technology
James P. Leonard, Chief Deputy City Solicitor
Christopher R. DiFusco, Divisional Deputy City Solicitor
Joshua Stein, Deputy City Solicitor
Benjamin Hinerfeld, Deputy City Solicitor

⁷ See footnote 3.